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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,481	12/04/2003	Mathilde Winckels	233367US26	7527

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EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/726,481	Applicant(s) WINCKELS ET AL.	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/04/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12, 14, 18, 19, 22-25, 27-32, 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Zytko (3,558,022).

The Zytko reference discloses a device (Fig. 12) comprising a bottle formed by a body and having a neck 110 with an axis X and an opening, the opening being defined by a rim which includes an inner portion 112 and an outer portion, at least part of the outer portion being axially located above the inner portion 112; a flow reducer 120 mounted in the opening of the neck, the reducer 120 having a flange 124 resting on the inner portion of the rim of the neck; the flange 124 of the reducer 120 extending to a non-zero distance from at least a part of the outer portion of the rim, and further wherein the flange 124 is located axially between the inner and outer portions of the rim of the neck 110.

Regarding claim 2, the reducer 120 includes a free end which, with the reducer 120 mounted in the bottle, is located at a non-zero distance, measured transversely relative to the axis X, from a wall of the bottle.

Regarding claim 3, the transverse cross-section of the reducer 120 is circular and diminishes towards its free end so as to form a tapered portion.

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Regarding claim 4, the reducer 120 is retained by a force fit inside the neck of the bottle.

Regarding claims 5 and 6, an outer surface of the reducer includes a plurality of ribs 122.

Regarding claim 7, the reducer 120 is made by molding a thermoplastic material from a single piece (col. 2, lines 30-33 and 46).

Regarding claim 8, the reducer 120 is made from a thermoplastic material selected from the group consisting of polyvinyl chlorides.

Regarding claim 9, the device further includes a cap 38 which closes the neck opening in a leaktight manner with respect to the product, wherein an inner wall of the cap 38 bears on at least part of the outer portion of the rim.

Regarding claim 10, the cap 38 includes a screw thread on its inner wall designed to engage with a counterpart screw thread provided on an outer wall of the bottle neck 110.

Regarding claims 11 and 12, the device includes an applicator 40 (Fig. 3) coupled to the cap 38.

Regarding claim 14, the bottle is made of glass.

Regarding claim 18, the device includes a cap 38 removably mountable on The bottle, and wherein in a mounted position in which the cap 38 is mounted on the bottle, the cap 38 is in contact with the rim of the opening and further wherein in the mounted position the cap does not contact the flange 123 of the reducer 120.

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Regarding claim 19, the reducer 120 includes an end disposed within the bottle which is spaced from an inner side surface of the bottle such that a volume is provided between the end of the reducer and the inner side surface such that, when the bottle is moved to a non-upright position, product in the container is held in the volume without passing out of the opening of the neck thereby reducing spillage when the bottle is in the non-upright position.

Regarding claim 22, the outer portion of the rim is spaced from the inner portion by an axial distance larger than a thickness of the flange 123 of the reducer 120

Regarding claim 24, a topmost part of the outer portion of the rim is higher than topmost part of the flange of the reducer.

Regarding claim 25, the topmost part of the outer portion of the rim forms a seal with the cap when the cap is in the mounted position.

Regarding claims 27 and 28, the inner portion of the rim is recessed with respect to the outer portion of the rim such that the outer portion of the rim is higher than the inner portion of the rim.

Regarding claim 29, the inner portion of the rim is recessed from the outer portion by an amount greater than a thickness of the flange of the reducer 120.

Regarding claims 30 and 31, the bottommost part of the outer portion of the rim is higher than a topmost part of the flange 123 of the reducer 120.

Regarding claim 32, a cap 38 includes an applicator 40.

Regarding claim 39, the reducer 120 includes an upper portion and a lower portion, wherein the upper portion is disposed closer to the flange than the lower

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portion, and wherein an inner cross-section of the upper portion is larger than an inner cross-section of the lower portion.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zytco (3,558,022) in view of Kellet (6,83,932).

Although the Zytco reference does not disclose that the device includes brush applicator, attention is directed to the Kellet reference which discloses another application device having a brush applicator.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a brush applicator for the dropper applicator of the Zytco reference in view of the teaching of the Kellet reference for applying product to a surface, wherein so doing would amount a mere substitution of one functional equivalent application means for another within the same art that would work equally well in the Zytco device.

5. Claims 15-17, 20, 33-38, 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zytco (3,558,022).

Although Zytco does not specifically disclose that other liquids contained in the bottle are cosmetic product, such as a nail care product or a nail polish, it would have

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been obvious to one of ordinary skill in the art at the time of the invention was made to provide a cosmetic product, such as a nail care product in the Zytco bottle, wherein so doing would be a matter of obvious design choice.

Regarding claim 35, the reducer includes an upper portion and a lower portion, wherein the upper portion is disposed closer to the flange than the lower portion, and wherein an inner cross-section of the upper portion is larger than an inner cross-section of the lower portion.

Regarding claim 36, the reducer 120 includes a plurality of ribs 122 on an outer surface of the upper portion.

Regarding claim 37, a volume is defined between an outer surface of the lower portion of the reducer and an inner surface of the bottle such that the product in the bottle is received in the volume when the bottle is moved to a non-upright position and spillage is reduced.

Regarding claim 38, the lower portion of the reducer 120 is disposed inside of the neck of the container.

Regarding claim 41, the bottle is formed of glass.

Regarding claim 42, the reducer 120 includes at least one rib 122 protruding from a location below the flange, the at least one rib contacting an inner surface of the bottle, and further wherein the reducer 120 is tapered below the at least one rib 122 such that an inner cross-section of the reducer at a location of the at least one rib 122 is larger than an inner cross-section of a lower portion of the reducer below the rib.

6. Claims 21 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zutko (3,558,022) in view of Dumler et al (5,826,741).

Although the Zutko reference does not disclose that the rim of the bottle includes a protruding sealing portion, attention is directed to the Dumler et al reference which teaches an application device having a protruding sealing portion on the trim of the collar 2 of the bottle 1 as shown in Figure 1.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to employ a protruding portion on the rim of the Zutko bottle in view of the teaching of Dumler et al for provide a seal to prevent dryness.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kingsford, Bitzer, Davidson and Robinson show application device with flower reducer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL  
July 21, 2005

Huyen Le  
Examiner  
Art Unit 3751